

Appl. No. 10/580,232
Amendment dated: November 28, 2008
Reply to OA of: October 28, 2008

REMARKS

Applicants have amended the specification and claims to more particularly define the invention taking into consideration the outstanding Official Action. The specification has been amended at page 1 to cross-reference the provisional application by providing the appropriate serial number and filing date of the provisional application. This information is contained on the application data sheet filed with the application and confirmed on the official filing receipt. Therefore this is not a late submission of the claim for priority.

The Official Action urges that there are two patentably distinct inventions claimed in the present application. The Group I invention relates to a mixture of isolated or synthetic affinity molecules and includes claims 1-9 and 16. The Group II invention is drawn to the use of a mixture. Applicants elect, with traverse, the Group I invention drawn to a mixture of isolated or synthetic affinity molecules. This mixture is particularly useful for the use in an apparatus which is the subject of Group II. However, the improper use claims have been replaced by appropriate method of use claims as set forth in added claims 17-24. These claims should be examined with the elected invention as they form part of the same inventive concept and are linked to each other.

In the requirement for restriction, it is urged that Groups I and II are linked by the limitation in claim 1 calling for a mixture of isolated or synthetic affinity molecules in a liquid carrier comprising at least two different affinity molecules, each with affinity for a predetermined analyte. It is noted that the recitation for the use in the method claims is said to be for an intended use. However, this intended use needs to be considered in the determination of the claimed subject matter and cannot be ignored in any claim analysis.

This is especially true in view of the amendment to claim 1 which avoids the basis for holding that the inventions are patentably distinct with respect to the citation of the Brosnan reference.

As to the statement in the Official Action with respect to the "common technical feature" linking Groups I and II, i.e., "*a mixture of isolated or synthetic affinity molecules*

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in a liquid carrier comprising at least two different affinity molecules, each with affinity for a predetermined analyte” that it is not defining a contribution over the prior art as set forth in PCT Rule 132, with all due respect the Applicant disagrees. The Official Action supports this statement by referring to Brosnan et al. (US 4,987,086) claiming that this patent teaches a kit comprising vials holding multiple antibodies. In column 8, lines 29-34 to which the Examiner refers to, however, it is stated that the one or more monoclonal antibodies are coupled to suitable fluorochromes, meaning that the monoclonal antibodies are fluorescently labelled, since in the method of US 4,987,086 the fluorescence emissions of the marked antibodies is measured in order to identify and enumerate cells in subpopulations of a population of cells in a whole blood sample. The mixture of the affinity molecules of the present invention are not labelled and they are selected due to their specific affinity to a predetermined analyte (antigen), making them flow through the flow cells of a sensor system and not attach to an antigen until each of them reaches the flow cell containing the antigen for which it has affinity for. In order to make this argument more credible, Applicants have amended present claim 1 by inserting “unlabelled” in front of affinity molecules (the amended claim 1 is attached). Support for this amendment can be found on page 4, line 26.

Moreover, a set of method claims, claims 17-24, which is attached. The basis for those new claims is actually the whole application as a whole. **New claim 17:** basis can be found on several passages of the description, for example, at least on page 8, lines 25-33 and page 9, lines 14-20. **New claim 18:** basis can be found at least on page 6, lines 23-24. **New claim 19:** basis can be found at least on page 3, lines 4-7. The rest of the **new claims 20-24** correspond to present claims 3-7 in corresponding order.

Finally, as regards additional prior art for which an IDS must be filed, please be advised that in a Communication received (dated April 29, 2008) in the corresponding EP-application two additional documents were cited by the European patent Examiner, which were not included in the International Search Report, namely WO 2004/001416 mentioned in the description of the present patent application on page 4, line 14 and WO 00/16903, both of the same Applicant as the present patent application. These are

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being made of record with the present submission and acknowledgement of same in the next Official Action would be appreciated.

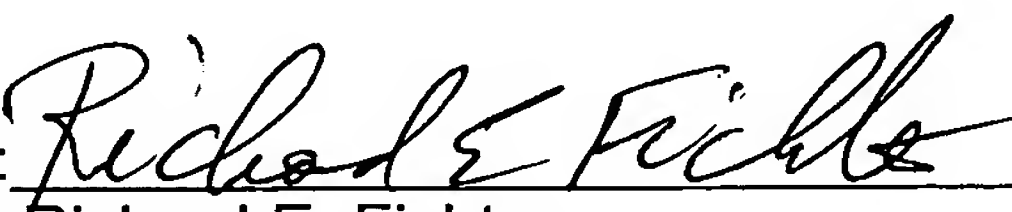
Applicants also wish to note the cross reference to related applications found in the present specification. As noted on page 4 of the specification, WO 2004/001417 referred to corresponds to co-pending application 10/517,320, now abandoned which was re-filed as serial number 12/289,218. Also note for example page 5, line 29 that WO 2004/001392 corresponds to co-pending application 10/517,321.

In addition, with respect to the election of species, Applicants elect the narcotics of claim 6 from the list of different analytes as set forth on page 3 of the Official Action. However, this election is made with traverse as the various species are not patentably distinct in view of the state of the art and as would be appreciated by one of ordinary skill in the art. Accordingly, it is most respectfully requested that this aspect of the requirement be withdrawn.

In any case, an action on the merits taking into consideration all of the claims is now in order in accordance with the election of the Group I invention and the species of claim 6, directed to narcotics. This Official Action should take into consideration the information disclosure already of record, the international search associated with the PCT application and additional prior art noted herein.

Respectfully submitted,

BACON & THOMAS, PLLC

By: 
Richard E. Fichter
Registration No. 26,382

625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314
Phone: (703) 683-0500
Facsimile: (703) 683-1080
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